IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2110 of 2006
Date of Decision: 23.2.2007

Narinjan Singh ...Appellant

Versus

Bishan Singh ....Respondent

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri R.S. Manhas, Advocate, for the appellant.

Shri S.S. Khaira, Advocate, for the respondent.

HEMANT GUPTA, J.

The defendant is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby suit for specific performance of an agreement dated 24.4.2000, was decreed.

It is the case of the plaintiff-respondent that earlier on 12.1.2000, the defendant-appellant received Rs.1 lacs and executed an agreement of sale in his favour. Thereafter, on 20.1.2000 and 7.2.2000, the defendant-appellant received a sum of Rs.50,000/- each and also executed another agreement to sell on 24.4.2000. The defendant agreed to execute the sale deed in respect of the land in dispute on or before 25.6.2001. Since the sale deed was not executed on receipt of balance amount of Rs.1,25,000/-, the present suit for specific performance was filed on 18.7.2001. Both the

Courts have decreed the said suit for specific performance of the agreement dated 24.4.2000.

Learned counsel for the appellant has vehemently argued that the defendant is in fact, brother of the plaintiff and the agreements of sale dated 12.1.2000 and 24.4.2000 were executed for the purposes of security to return the loan amount availed by the appellant.

Both the Courts have found that the agreement of sale was executed and the earnest money as detailed by the plaintiff was received by the defendant. It has been further found that the plaintiff was present before the Sub Registrar on 25.6.2001, which is evident from affidavit Exhibit P.3. Sharam Singh and Dara Singh, who are marginal witnesses of both the agreements of sale, have appeared as PW1 and PW4, respectively. It has been further found that the receipts dated 20.1.2000 and 7.2.2000 in respect of payment of Rs.50,000/- each are signed by the appellant and Dara Singh is one of the marginal witnesses thereof. It has been further found that in fact Dara Singh is related to the appellant. PW2-Amrik Singh is the scribe of both the agreements dated 12.1.2000 and 24.4.2000. In fact, both the Courts have appreciated the entire evidence to return a concurrent finding of fact in respect of execution of the agreement on receipt of the earnest money of Rs.1 lac on 12.1.2000 and subsequently, Rs.1,00,000/- in two instalments. In fact, there is no evidence, not even oral evidence on behalf of the appellant, to show that the said amount was in fact a loan amount and the agreement of sale was transaction not intended to be an agreement of sale.

In view of the findings recorded which are proved to be findings in evidence, I do not find any patent illegality or irregularity in the

concurrent findings of fact recorded by the Courts below, which may give rise to any substantial question of law in the present appeal.

Hence, the present appeal is dismissed.

23-02-2007 (HEMANT GUPTA)
ds JUDGE